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EXAMINER

MICHALSKI, SEAN M

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MICHAEL MAICHEL, MARKUS SCHUESSLER, RALF KLUG,
CIRILO JAVIER PEREZ LOPEZ, and ANDREAS LARSCHEID

Appeal 2015-002563
Application 12/543,337
Technology Center 3700

Before STEFAN STAICOVICI, EDWARD A. BROWN, and
FREDERICK C. LANEY, *Administrative Patent Judges*.

BROWN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Michael Maichel et al. (Appellants)¹ appeal under 35 U.S.C. § 134(a) from the Examiner's decision rejecting claims 1, 2, 4, 7–11, and 17.² We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ The Appeal Brief indicates The Procter & Gamble Company is the real party in interest. Br. 1.

² Claims 3 and 16 have been cancelled, and claims 5, 6, 12–15, and 18–20 have been withdrawn from consideration. Br. 1.

INVENTION

Claims 1 and 17 are independent. Claim 1 is illustrative of the claimed subject matter, and reads:

1. A combination powered shaving and trimming device comprising:
 - a handle having an upper end and lower end;
 - a trimmer comprising at least two trimmer elements that interact with each other to trim hair disposed adjacent the upper end;
 - a razor attachment comprising:
 - a connecting structure adapted for removably mounting over the trimmer onto the upper end to cover the trimmer; and
 - a razor cartridge including at least one sharpened blade edge for shaving hair, the cartridge removably attached to the connecting structure;
 - a first electrical arrangement disposed in the handle wherein the first electrical arrangement is configured to supply power to the trimmer; and
 - a second electrical arrangement configured to supply power to the razor attachment.

Br. 8 (Claims App.).

REJECTION

Claims 1, 2, 4, 7–11, and 17 are rejected under 35 U.S.C. § 103(a) as unpatentable over Segrea (US 6,928,738 B2, issued Aug. 16, 2005), Garets (FR 2 716 402 A1, published Aug. 28, 1995), and Blaustein (US 7,761,998 B2, issued July 27, 2010).

ANALYSIS

Appellants argue claims 1, 2, 4, 7–11, and 17 as a group. Br. 3–6. We select claim 1 to decide the appeal with respect to the group, and claims

2, 4, 7–11, and 17 stand or fall with claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv).

As to claim 1, the Examiner finds Segrea discloses a combination shaving and trimming device comprising, *inter alia*, a trimmer (trim blades 98) and a razor attachment. Final Act. 2 (citing Segrea, Figs. 7–10). The Examiner determines Segrea’s trimmer does not comprise two trimmer elements or a first electrical arrangement, as claimed. *Id.* at 3. The Examiner finds Blaustein discloses a combination wet shaver and dry trimmer having two trimmer elements (i.e., moving blade 42 and stationary blade 40) and a first electrical arrangement. *Id.* (citing Blaustein, col. 3, ll. 22–30, 45–47, 55). The Examiner determines it would have been obvious to replace Segrea’s trimmer 98 with a dry trimmer and its associated electrical arrangement, as disclosed by Blaustein, to provide a combination wet and dry shaver. *Id.*; *see also* Ans. 9.

The Examiner determines the combination of Segrea and Blaustein lacks a second electrical arrangement disposed in, and configured to supply power to, the razor attachment. Final Act. 4. The Examiner finds Garets discloses a shaving device including a second electrical arrangement for providing heat to a user’s skin during shaving. *Id.* (citing Garets, p. 1).³ The Examiner concludes it further would have been obvious to modify Segrea by adding a second electrical arrangement, as disclosed by Garets, to provide a heating function to the shaving blade, because adding an electrical heating arrangement to a pivoting shaving blade is disclosed by Garets as providing benefits to closer shaving. *Id.*

³ The Examiner references the English-language translation of Garets.

Appellants contend it would not have been obvious to replace Segrea's non-powered wet shaving trimmer with Blaustein's powered trimmer. Br. 4–5. According to Appellants, Segrea does not suggest a powered trimmer and such extreme modification would increase complexity and cost.

We are not persuaded by these contentions for several reasons. First, the Examiner relies on Blaustein, not Segrea, as teaching a powered trimmer. Second, even assuming modifying Segrea's razor by replacing its trimmer with a powered dry trimmer arrangement would add cost, Appellants do not provide a persuasive argument, or evidence, to show why this would have discouraged one skilled in the art from seeking benefits provided by the modification. *See, e.g., In re Farrenkopf*, 713 F.2d 714, 718 (Fed. Cir. 1983) (“We agree with the board that additional expense associated with the addition of inhibitors would not discourage one of ordinary skill in the art from seeking the convenience expected therefrom.”). Similarly, even if Segrea's razor would be made more complex by replacing its trimmer with a powered dry trimmer arrangement, Appellants do not provide a persuasive argument, or evidence, to show why this would have discouraged one skilled in art from making the proposed modification. In this regard, Appellants have not explained persuasively how such potential disadvantages of increased cost and complexity outweigh the improved functionality of Segrea's shaving device resulting from combining the benefits of an electric trimmer and a wet shave, as taught by Blaustein, and by providing a heating function, as taught by Garets. *See Medichem, S.A. v. Rolabo, S.L.*, 437 F.3d 1157, 1165 (Fed. Cir. 2006) (“a given course of action often has simultaneous advantages and disadvantages, and this does

not necessarily obviate motivation to combine”). Further, adapting a prior art mechanical device to include the use of available modern electronics (i.e., Blaustein’s moving blade 42 and electrical arrangement) would have been reasonably obvious to one with ordinary skill in the art. *See Leapfrog Ent., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1161 (Fed. Cir. 2007) (“Applying modern electronics to older mechanical devices has been commonplace in recent years.”)

Appellants assert it is not clear how one of ordinary skill would modify Segrea’s non-powered trimmer with Blaustein to result in the claimed invention. Br. 5. According to Appellants, the claimed power trimmer cuts hair in a scissor fashion, whereas Segrea’s non-powered trimmer cuts hair by slicing. *Id.*

These contentions are not persuasive. First, claim 1 recites “at least two trimmer elements that interact with each other to trim hair.” It does not require the trimmer elements to trim hair in a scissor fashion. Limitations not appearing in the claims cannot be relied upon for patentability. *In re Self*, 671 F.2d 1344, 1348 (CCPA 1982). Second, Appellants do not explain persuasively why such slicing action of Segrea must be retained in the combination. Third, Appellants do not persuade us that the proposed modification of Segrea would be beyond the level of skill of one of ordinary skill in the art. We note that a determination of obviousness based on the combined teachings from multiple references does not require physical combination of elements. *See In re Sneed*, 710 F.2d 1544, 1550 (Fed. Cir. 1983) (“[I]t is not necessary that the inventions of the references be physically combinable to render obvious the invention under review.”); *In re Keller*, 642 F.2d 413, 425 (CCPA 1981) (“The test for obviousness is not

whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference. . . .”). Appellants fail to show that replacing Segrea’s trimmer with Blaustein’s powered trimmer would be beyond the level of skill of one of ordinary skill in the art.

Appellants also contend Segrea does not teach an electrical arrangement for a powered trimmer, and neither Segrea nor Blaustein teaches or suggests a secondary electrical arrangement for a blade heating function. Br. 5. Appellants assert the Examiner’s combination of Segrea, Blaustein, and Garets is based on impermissible hindsight. *Id.*

These contentions are not persuasive. Non-obviousness cannot be established by attacking the applied references individually when the rejection is predicated upon a combination of prior art disclosures. *See In re Merck & Co. Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). The Examiner’s modification of Segrea to provide a powered trimmer is discussed above. Appellants’ contention regarding a second electrical arrangement does not address the Examiner’s combination. The Examiner relies on Garets for this teaching. Final Act. 4. Appellants do not explain persuasively why the Examiner’s proposed modification of Segrea in view of Garets would *not* result in a second electrical arrangement “configured to supply power to the razor attachment,” as claimed.

Appellants further contend Garets does not disclose a removable razor cartridge or removable connecting structure. Br. 6. According to Appellants, the combination of Segrea, Blaustein, and Garets does not result in a combination powered shaving and trimming device comprising a connecting structure removably attached to the upper end of the handle,

covering the trimmer at one end and *removably attached to a razor cartridge at the other end. Id.*

It is the Examiner's position, however, that Segrea discloses a razor cartridge removably attached to a connecting structure (lower body portion 86) by release button 92 (actuator), and the connecting structure is removable from the handle. Final Act. 2; Ans. 10. Even if Garets does not disclose a removable razor cartridge or removable connecting structure, we are not persuaded that the combination would lack this feature.

Finally, to the extent Appellants argue the Examiner improperly used hindsight, the argument is of no import where the Examiner states a rationale for the modification that we determine is supported adequately by sufficient facts. *See In re Cree*, 818 F.3d 694, 702, n.3 (Fed. Cir. 2016).

For the above reasons, we sustain the rejection of claim 1 as unpatentable over Segrea, Garets, and Blaustein, and claims 2, 4, 7–11, and 17 fall with claim 1.

DECISION

We affirm the Examiner's decision to reject claims 1, 2, 4, 7–11, and 17.

No time period for taking any subsequent action in connection with this appeal may be extended according to 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED